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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,730	06/20/2005	Ansgar Behler	C 2680 PCT/US	8621

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COGNIS CORPORATION
PATENT DEPARTMENT
300 BROOKSIDE AVENUE
AMBLER, PA 19002

EXAMINER

NAGUBANDI, LALITHA

ART UNIT	PAPER NUMBER
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1621

MAIL DATE	DELIVERY MODE
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07/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/539,730	Applicant(s) BEHLER ET AL.	
	Examiner Lalitha Nagubandi	Art Unit 1621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on amdt June 6th 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 44-54 is/are pending in the application.
- 4a) Of the above claim(s) 1-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Office Action

Status of the Claims

Claims 44-54 are pending in this application. Claims 1-43 have been cancelled.

Claims 44-54 are considered for examination in this office action.

Response to Arguments

Applicant's amendments filed on June 6th 2007, with respect to the rejection of claims 35-43 under 35 U.S.C. 103(a) have been fully considered. In view of the cancellation of the claims, the rejection has been withdrawn. The claim objections drawn to claims 44-46, have been withdrawn in view of the amendment. However, upon further consideration, a new ground of rejection is made in view of the following reference and the indication of allowability of the subject matter of claims 47-54 as stated earlier are herewith withdrawn. The finality of the previous office action has been withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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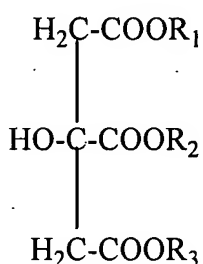
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 44-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6,024,947 and 5,888,951.

Applicants claim a cosmetic composition comprising: one or more active ingredients and a mixture of mono, di, and triesters of citric acid and optionally free citric acid along with a anionic surfactant or a foaming agent.

Determination of Scope and content of the Prior Art (MPEP§2141.01)

US Pat. No. 6,024,947 teaches cosmetic compositions of citric acid esters having improved rinsability.



Formula (I)

US Pat. No. 5,888,951 teaches foaming composition for cleaning the skin, employing anionic surfactants which include, sodium lauroyl ether sulphate and foaming agents of formula, $\text{R}^1 \text{O} (\text{G})_p$ (see col. 5 lines, 25-45).

Ascertainment of the difference between the Prior Art and Claims (MPEP §2141.02)

The difference between the instant composition and 6,024,947 is that the instant cosmetic composition requires 2 to 10 parts ethylene oxide per alkyl group of the ethoxylated alkyl group present in the ester component and absence of a surfactant or a foaming agent.

The difference between the instant composition and 5,888,951 is the instant cosmetic composition requires citric esters, and 5,888,951 is silent about the citric acid ester mixture in the foaming composition.

Finding of prima facie obviousness – rational and motivation (MPEP § 142-2143)

It is sufficient if a reference composition is so closely related to the claimed composition that a chemist would find the difference an obvious variation; thus, claims are refused where the difference is primarily the combination of a known surfactant or a foaming agent.

Therefore the subject matter as a whole would have been obvious to one of ordinary skill in the art and one would have been motivated to modify the cosmetic composition cited above at the time of invention, and the ordinary artisan would have had a reasonable expectation of success and hence it is a prima facie obvious.

Conclusion

No claims are allowed

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lalitha Nagubandi whose telephone number is 571 272 7996. The examiner can normally be reached on 6.30am to 3.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eyler, Yvonne can be reached on 571-272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lalitha Nagubandi
Patent Examiner
Technology Center 1600

June 27th, 2007.



Samuel A Barts

Primary Patent Examiner
Technology Center 1600